



California Regional Water Quality Control Board Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • FAX (213) 576-6640
<http://www.waterboards.ca.gov/losangeles>



Matthew Rodriguez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

December 16, 2011

Ms. Sarah Postyn
GID Investment Advisers, LLC
80 E. Sir Francis Drake Blvd.
Larkspur, CA 94939

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7010 3090 0002 1022 4883

COMPLAINT NO. R4-2011-0027-M FOR MANDATORY MINIMUM PENALTY AGAINST GID INVESTMENT ADVISERS, LLC, SEA CASTLE APARTMENTS, 1725 OCEAN FRONT WALK, SANTA MONICA, CALIFORNIA (ORDER NOS. R4-2004-0058 AND R4-2009-0047, NPDES PERMIT NO. CAG994003, CI-8207)

Dear Ms. Postyn:

Enclosed is Complaint No. R4-2011-0027-M for Mandatory Minimum Penalty in the amount of \$267,000 against GID Investment Advisers, LLC (hereinafter Permittee) for violating waste discharge requirements and monitoring and reporting requirements contained in Regional Board Order Nos. 2004-0058 and R4-2009-0047. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2011-0027-M and return it to the Regional Board by 5:00 pm on **January 17, 2012**. If we do not receive the waiver and full payment of the mandatory minimum penalty by **January 17, 2012**, this matter will be heard before the Regional Board or a Hearing Panel. An agenda containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

If you have any questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Mr. Andrew Choi at (213) 576-6751.

Sincerely,

Paula Rasmussen, Chief
Compliance and Enforcement Section

Enclosures: Complaint No. R4-2011-0027-M
Exhibit "A"
Notice of Public Hearing

cc: See mailing list

California Environmental Protection Agency

Ms. Sarah Postyn
GID Investment Advisers, LLC

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December 16, 2011

MAILING LIST

Samuel Unger, P.E., Los Angeles Regional Water Quality Control Board [via e-mail]
Sarah Olinger, Office of Chief Counsel, State Water Resources Control Board [via e-mail]
Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board [via e-mail]
Stephen J. O'Neil, Esq., Sheppard Mullin Richter & Hampton LLP [via e-mail]

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

| | | |
|-------------------------------------|---|---|
| In the matter of: |) | Complaint No. R4-2011-0027-M |
| |) | Mandatory Minimum Penalty for |
| |) | Violation of California Water Code § 13376 |
| GID Investment Advisers, LLC |) | And |
| Sea Castle Apartments |) | Order Nos. 2004-0058 and R4-2009-0047 |
| Santa Monica, California |) | (NPDES No. CAG994003) |

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385, subdivisions (h) & (i) is issued to GID Investment Advisers, LLC (hereinafter Permittee) based on a finding of violations of waste discharge requirements prescribed in Order Nos. 2004-0058 and R4-2009-0047 (NPDES No. CAG994003, CI No. 8207).

The Chief Prosecutor of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) alleges the following:

1. The Permittee operates Sea Castle Apartments (hereinafter facility) located at 1725 Ocean Front Walk, Santa Monica, California. The Permittee discharges up to 20,000 gallons per day (GPD) of wastewater that consists of blowdown water from the cooling tower and infiltrating groundwater. The discharge flows into the Pico Kenter Storm Drain, thence to Santa Monica Bay, a water of the United States. The wastewater is susceptible to containing total suspended solids (TSS), settleable solids (SS), total residual chlorine (TRC), copper and other pollutants, which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.).
2. On April 1, 2004, the Regional Water Quality Control Board, Los Angeles Region (Regional Board) adopted Order No. R4-2004-0058, NPDES Permit and Waste Discharge Requirements for *Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties*. On February 16, 2006, the Executive Officer determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Order No. R4-2004-0058.
3. On April 2, 2009, the Regional Board adopted Order No. R4-2009-0047 NPDES Permit and Waste Discharge Requirements for *Discharges of Nonprocess Wastewater to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties*. On January 29, 2010, the Executive Officer approved the Permittee's continued enrollment under Order No. R4-2009-0047 for the waste discharges from the facility. Order No. R4-2009-0047 became effective to the Permittee's discharge on January 29, 2010, and superseded Order No. R4-2004-0058 except for enforcement purposes.

December 16, 2011

4. Order No. R4-2004-0058, (Effluent Limitations E.1.a and E.1.c) contains the following effluent limitations for TSS, SS, TRC and copper:

| Constituent | Unit of Measure | Discharge Limitations | |
|-------------|-----------------|-----------------------|-----------------|
| | | Daily Maximum | Monthly Average |
| TSS | mg/L | 150 | 50 |
| SS | ml/L | 0.3 | 0.1 |
| TRC | mg/L | 0.1 | --- |
| Copper | µg /L | 5.8 | 2.9 |

mg/L = milligrams/liter, ml/L = milliliters/liter. µg/L = micrograms/liter

5. Order No. R4-2009-0047, (Effluent Limitations and Discharge Specifications V. Table 1 and Table 9) contains the following final effluent limitations for TSS, SS, TRC and copper:

| Constituent | Unit of Measure | Discharge Limitations | |
|-------------|-----------------|-----------------------|-----------------|
| | | Daily Maximum | Monthly Average |
| TSS | mg/L | 150 | 50 |
| SS | ml/L | 0.3 | 0.1 |
| TRC | mg/L | 0.1 | --- |
| Copper | µg /L | 5.8 | 2.9 |

6. Reporting Requirements of the Monitoring and Reporting Program included in Order Nos. R4-2004-0058 and R4-2009-0047 require the Permittee to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board according to the following schedule, pursuant to the authority of CWC § 13383:

| Reporting Period | Report Due | |
|--------------------|--|--|
| | Order No. R4-2004-0058 Reporting Requirements I.A | Order No. R4-2009-0047 Reporting Requirements I.X.B.3 - Table 2 |
| January - March | May 15 | May 15 |
| April - June | August 15 | August 14 |
| July - September | November 15 | November 14 |
| October - December | February 15 | February 14 |

7. On May 17, 2011, the Chief Prosecutor of the Regional Board issued the Permittee Settlement Offer No. R4-2011-0027-M to participate in the Expedited Payment Program

(Settlement Offer). The Settlement Offer included a Notice of Violation (NOV) notifying the Permittee of nine (9) effluent limit violations and one hundred ninety-four (194) reporting violations. Eighty-two (82) of those violations were cited in Exhibit A of the Settlement Offer as subject to mandatory minimum penalties (MMP) in the total amount of \$246,000.

8. On June 9, 2011, the Permittee requested that the due date of June 16, 2011 for submission of information be extended by 14 days to June 30, 2011. On June 10, 2011, the Regional Board granted the extension and the due date was extended to June 30, 2011.
9. On July 1, 2011, the Permittee requested that the due date of June 30, 2011 for submission of information be extended to July 8, 2011. On July 6, 2011, the Regional Board granted the 2nd extension and the due date was extended to July 8, 2011.
10. Prior to the issuance of the Settlement Offer and associated written NOV, the Permittee submitted the 1st Quarter 2006 monitoring report on November 6, 2006; the 1st and 2nd Quarter 2007 monitoring reports on October 1, 2007; the 3rd and 4th Quarter 2009 and 1st Quarter 2010 monitoring reports on July 7, 2010; and the 1st through 4th Quarter 2008 and 1st Quarter 2009 monitoring reports on September 9, 2010. These reports were not submitted in response to a written NOV of the Regional Board. Prior to the submission of these reports, the Permittee did not on any occasion previously receive from the Regional Board a NOV for failure to timely file a discharge monitoring report. After the Regional Board received and reviewed these reports, enforcement staff determined that the discharges during these periods did not violate effluent limitations.
11. Prior to the issuance of the Settlement Offer and associated written NOV, the Permittee submitted the 2nd Quarter 2006 monitoring report on November 6, 2006. This report was not submitted in response to a written NOV of the Regional Board. Prior to the submission of this report, the Permittee did not on any occasion previously receive from the Regional Board a NOV for failure to timely file a discharge monitoring report. After the Regional Board received and reviewed this report, enforcement staff determined that the discharges during this period did violate effluent limitations in Order No. R4-2004-0058.
12. Since issuance of the Settlement Offer and associated written NOV, the Permittee submitted the 4th Quarter 2010 monitoring report on June 8, 2011. This report was being submitted in response to the corresponding NOV issued with the Settlement Offer on May 17, 2011. After the Regional Board received and reviewed this report, enforcement staff determined that the discharges during this period did not violate effluent limitations.
13. In response to the same Settlement Offer, the Permittee submitted the 4th Quarter 2006 and 3rd Quarter 2010 monitoring reports on June 6, 2011 and June 8, 2011, respectively. Both of these reports were submitted in response to the NOV, however, a review of the monitoring reports indicates that discharges during these time periods violated effluent limitations in Order Nos. R4-2004-0058 and R4-2009-0047.

14. The alleged late reporting violations described above in Paragraphs 10 and 12 are subject to mandatory minimum penalties but only for each required report that was not timely filed by the required deadline reference above in Paragraph 6.
15. The alleged late reporting violations described above in Paragraphs 11 and 13 are subject to mandatory minimum penalties in the amount prescribed in CWC § 13385.1(a)(1).
16. Two hundred and thirteen (213) violations of Order Nos. R4-2004-0058 and R4-2009-0047 were noted in the Permittee's self-monitoring reports, as cited in Exhibit "A". Of those violations, there are seventeen (17) violations of effluent limitations for total suspended solids, settleable solids, total residual chlorine and copper, which are subject to mandatory minimum penalties in the amount of \$51,000. Additionally, there are one hundred ninety five (195) complete thirty (30) day periods which constitute 195 late reporting violations for the failure to timely submit monitoring reports by the required deadlines. However, since CWC § 13385(b)(1) applies to some of the late reporting violations, the mandatory minimum penalty is adjusted to two hundred sixteen thousand dollars (\$216,000) in mandatory minimum penalties. In total, this Complaint addresses mandatory minimum penalties in the amount of \$267,000. These violations are listed in Exhibit A, which is incorporated herein by reference.
17. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
18. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385(c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
19. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."
20. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
21. CWC § 13385.1(a)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the

report is designed to ensure compliance limitations contained in waste discharge requirements that contain effluent limitations. This section applies to violations occurring on or after January 1, 2004.

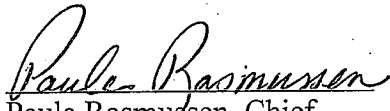
22. CWC § 13385.1(b)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000), but only for each required report that is not timely filed and shall not be separately assessed for each 30 day period, if the discharger did not on any occasion previously receive from the regional board a notice of violation for the failure to timely file a discharge monitoring report and the discharges during those periods do not violate effluent limitations if a discharger files the missing report within 30 days after receiving written notice of the missing reports.
23. CWC § 13385.1(e) states that the provisions in CWC § 13385.1(b)(1) apply to violations for which an administrative civil liability complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred.

YOU ARE HEREBY GIVEN NOTICE THAT:

24. The Chief Prosecutor proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$267,000 for the violations cited in Exhibit "A". This Complaint addresses administrative civil liability for violations that are specifically identified in Exhibit "A" as subject to a mandatory minimum penalty. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
25. The Permittee may waive the right to a hearing and pay the recommended civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on **January 17, 2012**. If the hearing is waived, a check in the amount of \$267,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on **January 17, 2012**.
26. If the Regional Board does not receive a waiver and full payment of the recommended penalty by **January 17, 2012**, the Complaint will be heard before the Regional Board or a Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
27. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
28. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative

proceedings. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

29. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
30. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
31. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Paula Rasmussen, Chief
Compliance and Enforcement Section
Los Angeles Regional Water Quality Control Board

December 16, 2011

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2011-0027-M

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the GID Investment Advisers, LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2011-0027-M (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ *Check here if the Permittee waives the hearing requirement and will pay the recommended liability.*

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$267,000** by check that references "ACL Complaint No. R4-2011-0027-M" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **January 17, 2012** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Chief Prosecutor may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT "A" - NOTICE OF VIOLATION
Effluent Limit Violations

GID Investment Advisers, LLC
CI No. 8207

| Date | Monitoring Period | Violation Type | Parameter | Reported Value | Permit Limit | Units | Pollutant Category | % Exceeded | Serious/ Chronic | Water Code Section 13385 | Penalty |
|----------|-------------------|-----------------|-------------------|----------------|--------------|-------|--------------------|------------|------------------|--------------------------|-----------------|
| 05/17/06 | 2nd Quarter 2006 | Daily Max | TRC | 0.5 | 0.1 | mg/L | 1 | 400% | Serious | (h)1 | \$3,000 |
| 11/15/06 | 4th Quarter 2006 | Monthly Average | Copper | 3 | 2.9 | mg/L | 2 | 3% | Chronic | (i)1 | \$0 |
| 03/31/10 | 1st Quarter 2010 | Monthly Average | Settleable Solids | 0.2 | 0.1 | ml/L | 1 | 100% | Serious | (h)1 | \$3,000 |
| 04/21/10 | 2nd Quarter 2010 | Daily Max | Copper | 400 | 5.8 | ug/L | 2 | 6,797% | Serious | (h)1 | \$3,000 |
| 04/21/10 | 2nd Quarter 2010 | Daily Max | Settleable Solids | 1.5 | 0.3 | ml/L | 1 | 400% | Serious | (h)1 | \$3,000 |
| 04/30/10 | 2nd Quarter 2010 | Monthly Average | Suspended Solids | 61 | 50 | mg/L | 1 | 22% | Chronic | (i)1 | \$3,000 |
| 04/30/10 | 2nd Quarter 2010 | Monthly Average | Copper | 400 | 2.9 | ug/L | 2 | 13,693% | Serious | (h)1 | \$3,000 |
| 04/30/10 | 2nd Quarter 2010 | Monthly Average | Settleable Solids | 1.5 | 0.1 | ml/L | 1 | 1,400% | Serious | (h)1 | \$3,000 |
| 05/31/10 | 2nd Quarter 2010 | Monthly Average | Copper | 5 | 2.9 | ug/L | 2 | 72% | Serious | (h)1 | \$3,000 |
| 05/31/10 | 2nd Quarter 2010 | Monthly Average | Settleable Solids | 0.2 | 0.1 | ml/L | 1 | 100% | Serious | (h)1 | \$3,000 |
| 09/30/10 | 3rd Quarter 2010 | Monthly Average | Copper | 3.1 | 2.9 | ug/L | 2 | 7% | Chronic | (i)1 | \$3,000 |
| 01/19/11 | 1st Quarter 2011 | Daily Max | Copper | 18 | 5.8 | ug/L | 2 | 210% | Serious | (h)1 | \$3,000 |
| 01/31/11 | 1st Quarter 2011 | Monthly Average | Copper | 18 | 2.9 | ug/L | 2 | 521% | Serious | (h)1 | \$3,000 |
| 04/27/11 | 2nd Quarter 2011 | Daily Max | Copper | 23 | 5.8 | ug/L | 2 | 297% | Serious | (h)1 | \$3,000 |
| 04/27/11 | 2nd Quarter 2011 | Monthly Average | Copper | 23 | 2.9 | ug/L | 2 | 693% | Serious | (h)1 | \$3,000 |
| 05/19/11 | 2nd Quarter 2011 | Daily Max | Copper | 10 | 5.8 | ug/L | 2 | 72% | Serious | (h)1 | \$3,000 |
| 05/19/11 | 2nd Quarter 2011 | Monthly Average | Copper | 10 | 2.9 | ug/L | 2 | 245% | Serious | (h)1 | \$3,000 |
| 07/20/11 | 3rd Quarter 2011 | Monthly Average | Copper | 4.1 | 2.9 | ug/L | 2 | 41% | Serious | (h)1 | \$3,000 |
| | | | | | | | | | | | |
| | | | | | | | | | | Total | \$51,000 |

EXHIBIT "A" - NOTICE OF VIOLATION

Late Reporting Violations

| Reporting Period | Violation Type | Due Date | Received Date | Days Late | # of Complete 30-Day Periods | Serious/ Chronic | Water Code Section 13385 | Amount Per 30-Day Period | Penalty |
|------------------|----------------|------------|---------------|-----------|---------------------------------|---------------------|-----------------------------|-----------------------------|------------------|
| 1st Quarter 2006 | Late Reporting | 05/15/2006 | 11/06/2006 | 175 | 5 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 2nd Quarter 2006 | Late Reporting | 08/15/2006 | 11/06/2006 | 83 | 2 | Serious | (h)(1) | \$3,000 | \$6,000 |
| 4th Quarter 2006 | Late Reporting | 02/15/2007 | 06/16/2011 | 1,582 | 52 | Serious | (h)(1) | \$3,000 | \$156,000 |
| 1st Quarter 2007 | Late Reporting | 05/15/2007 | 10/01/2007 | 139 | 4 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 2nd Quarter 2007 | Late Reporting | 08/15/2007 | 10/01/2007 | 47 | 1 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 1st Quarter 2008 | Late Reporting | 05/15/2008 | 09/09/2010 | 847 | 28 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 2nd Quarter 2008 | Late Reporting | 08/15/2008 | 09/09/2010 | 755 | 25 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 3rd Quarter 2008 | Late Reporting | 11/15/2008 | 09/09/2010 | 663 | 22 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 4th Quarter 2008 | Late Reporting | 02/15/2009 | 09/09/2010 | 571 | 19 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 1st Quarter 2009 | Late Reporting | 05/15/2009 | 09/09/2010 | 482 | 16 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 3rd Quarter 2009 | Late Reporting | 11/15/2009 | 07/07/2010 | 234 | 7 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 4th Quarter 2009 | Late Reporting | 02/15/2010 | 07/07/2010 | 142 | 4 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 1st Quarter 2010 | Late Reporting | 05/15/2010 | 07/07/2010 | 53 | 1 | Serious | (h)(1) | \$3,000 | \$3,000 |
| 3rd Quarter 2010 | Late Reporting | 11/14/2010 | 06/08/2011 | 206 | 6 | Serious | (h)(1) | \$3,000 | \$18,000 |
| 4th Quarter 2010 | Late Reporting | 02/14/2011 | 06/08/2011 | 114 | 3 | Serious | (h)(1) | \$3,000 | \$3,000 |
| | | | | | | | | | |
| | | | | | | | Total | | \$216,000 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | Settlement Total | | \$267,000 |

**HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLC No. R4-2011-0027-M

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS**

| <u>DISCHARGER</u> | <u>DISCHARGE LOCATION</u> | <u>RECEIVING WATER</u> |
|------------------------------|--|------------------------|
| GID Investment Advisers, LLC | Sea Castle Apartments 1725 Ocean Front Walk Santa Monica, CA | Santa Monica Bay |

Administrative Civil Liability Complaint ("ACLC") No. R4-2011-0027-M alleges that GID Investment Advisers, LLC violated Order Nos. R4-2004-0058 and R4-2009-0047 by failing to comply with the reporting requirements and effluent limits. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$267,000 be assessed against the GID Investment Advisers, LLC for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: March 15, 2012
Time: 9:00 A.M.
Place: TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on February 24, 2012**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. GID Investment Advisers, LLC
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on January 30, 2012**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a

statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Andrew Choi, Water Resource Control Engineer. Mayumi Okamoto, Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Okamoto nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Andrew Choi
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6751
achoi@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **January 25, 2012**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

GID Investment Advisers LLC is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any legal and technical arguments and testimony the Party intends to present,
- 3) The name of each witness, if any, whom the Party intends to call at the hearing, and
- 4) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 pm on February 15, 2012**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **March 5, 2011**.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on January 17, 2012**. If possible, please submit written comments in Word format electronically to achoi@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by

5:00 pm on February 15, 2012 to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, at the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B., above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Mr. Samuel Unger, and a Legal Advisor, Ms. Sarah Olinger, Staff Counsel for the Regional Board. Neither Mr. Unger nor Ms. Olinger have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.

2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on February 15, 2012.**

Sarah Olinger
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 324-6682
SOlinger@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on February 15, 2012** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: December 16, 2011

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer or Chief Prosecutor. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;

9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.